IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 384 OF 1998.

1. Smt. Milagrina Dias,
   housewife,
2. Shri Santana George,
   r/o George Vaddo,
   Carmona. ... Petitioners.

Versus

1. The State of Goa through
   its Chief Secretary,
   Secretariat, Panaji.
2. The Land Acquisition Officer,
   P.W.D. Cell, Altinho, Panaji.
3. The Dy. Collector (L.A.)
   South Goa, Margao.
4. Shri Amacinho George,
   r/o George Vaddo, Carmona. ... Respondents.

Mrs. A.A. Agni and Mrs. N. Narvenkar, Advocates for the Petitioners.

Mr. P.A. Kamat, Additional Government Advocate for the Respondent State.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 17th June 2003.

ORAL JUDGMENT (PER REBELLO, J.)

The petitioners/land owners by the present petition seek to quash the Notification, dated 2nd September 1996, issued under Section 4 and the Declaration under Section 6, dated 22nd September 1997, published in the Official Gazette, dated 16th October 1997, to the extent it seeks to acquire the property of the petitioners surveyed under No. 40/5 (part) admeasuring 150 sq. mts.. The petitioners have filed a plan wherein the proposed road is shown as also the houses likely to be affected. It is the case of the

petitioners that their compound wall will be affected by the acquisition and consequently if the award is passed, the wall will have to be removed. It is further pointed out that the acquisition is solely meant for the benefit of one person. It is pointed out that the road does not proceed via Survey No. 39/1 and join the Carmona road but stops at Survey No. 40/7. It is then contended that under Section 5-A after objections have been filed, the competent authority or the Land Acquisition Officer has to make a report to the appropriate Government containing his recommendations and objections together with the records and proceedings held by him for decision of the Government. It is stated that in the instant case there are no recommendations and consequently there is no inquiry under Section 5-A. The argument is that the recommendations are required for the appropriate Government to make up its mind if it is necessary to acquire the land for the purpose of deciding whether declaration under Section 6 can be issued for the public purpose involved. It is therefore contended that the reliefs as prayed for ought to be granted.

2. On behalf of the Collector an affidavit-in-reply has been filed by Shri Ashok N.P. Dessai, Deputy Collector. Various objections have been

raised. The various allegations made by the petitioner have been denied. It is pointed out that there is no motorable access except for the existing pathway having a width of 1.5 mts.. The road as constructed it is contended will also benefit the petitioner herein. The properties have no access to the kutcha road and some of the properties were dropped from acquisition because of the existence of another kutcha road. At any rate it is denied that there is no public purpose.

3. The report of the Land Acquisition Officer forms a part of the proceedings. The objections by the objectors have been dealt with. So far as it concerns Stretch No. III it is pointed out from the report, that the recommendations on record as seen are that the Village Panchayat of Carmona by their resolution No. 4(a) dated 29th September 1996 had asked to drop the acquisition as the said roads have been proposed by the P.W.D. without intimation or consultation with the Village Panchayat. However, thereafter, the same Panchayat forwarded a letter dated 12th June 1997, intimating to the Land Acquisition Officer that by a subsequent resolution dated 5th March 1997 it had resolved to request the P.W.D. and Land Acquisition Officer to complete the acquisition process of all of the roads as notified by the Notification dated 2nd

September 1996. The objection of the objector that the construction of the road does not serve any public purpose and is a waste of public money has then been dealt with and it is set out that the construction of the road serves the need of the residents. The report further shows that the construction of the road will serve the needs of the people in the locality and no malafide intention is found on the part of the acquiring department while proposing the land of the objectors for acquisition. Insofar as the second objection of the petitioner herein that only one house will be benefited, there is a specific finding that at least 3 houses will be benefited.

4. At the hearing today, on behalf of the Collector/Land Acquisition Officer, a plan is filed which shows the several houses which have since come up. The said plan is taken on record. It will have to be seen firstly whether the objection taken by the petitioner warrants quashing of the Notification under Section 4 and Declaration under Section 6 and whether a report has been prepared after considering the objections filed under Section 5-A. Apart from Section 5-A, rules have been framed known as the Goa, Daman and Diu Land Acquisition Rules, 1972. Under Rule 4(4), the Collector shall submit the case with his report and

record of the proceeding for the decision of the Government under Section 5-A. In the instant case, such a report has been prepared. The only question is whether there were any recommendations. The contention is there are no recommendations so far as the construction of the road concerns the plot of the petitioners. In our opinion firstly the acquisition is of the entire stretch of land, the acquisition is for the public purpose of a road and the Collector had before him a resolution of the Village Panchayat. Secondly a specific finding is given that this road is for the benefit of the planned development of the village. There are recommendations. In other words there is compliance of both Section 5-A and Rule 4(4). In that light of the matter, insofar as the first contention is concerned, that will have to be rejected.

5. The second contention is that the acquisition is malafide or a colourable exercise of power. It is not possible to accept the said contention, considering what is on record and the site plan as made available to us. The record would show that the proposed road would be linking one of the main roads. The proposed road on the other side touches an existing pathway. The argument advanced on behalf of the petitioner is that it should have continued to the other road existing on the

adjacent side. It is, therefore, contended that because the road is not continuing, that by itself must show that the acquisition is not for a public purpose. It is not possible to accept such a contention. There are no specific allegations against the acquiring authorities. Once that be the case, merely because the petitioners' land to the extent of 150 sq. mts. is acquired, it cannot be said that there is material to hold that it smacks of malafides or arbitrariness. In a case of malafides and arbitrariness there have to be specific allegations by way of pleadings. There are no allegations of that kind. It is not possible to accept the bald averment, considering the material on record that the road constructed would help the other houses. The said contention has, therefore, to be rejected.

6. In the matter of public purposes, such as construction of roads, that will benefit the public, the Courts normally should be reluctant to interfere unless there is a strong case to show that there is a breach of the mandatory provisions of law or that there are prima facie strong allegations of malafides and the person against whom malafides are alleged is joined as a party. Ultimately it is the public purpose which will suffer.

Having said so, in our opinion, there is no

merit in this petition. Rule discharged, however, with no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

ed's.